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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2007-189

14 **DANA SUZANNE WEAVER FRANKLIN, aka**
15 **DANA SUZANNE FRANKLIN, aka**
16 **DANA WEAVER FRANKLIN**
3507 Foursome Drive
La Mesa, CA 91941

ACCUSATION

17 Registered Nurse License No. 566583,

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. On or about May 1, 2000, the Board of Registered Nursing ("Board")
25 issued Registered Nurse License Number 566583 to Dana Suzanne Weaver Franklin, also known
26 as Dana Suzanne Franklin, also known as Dana Weaver Franklin ("Respondent"). The license
27 expired on September 30, 2005, and has not been renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code ("Code") states:

Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, 'license' includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein.

4. Code section 2764 states:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

STATUTORY PROVISIONS

5. Code section 2761, subdivision (a), states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or

1 in a manner dangerous or injurious to himself or herself, any other
2 person, or the public or to the extent that such use impairs his or
3 her ability to conduct with safety to the public the practice
4 authorized by his or her license.

...

5 (e) Falsify, or make grossly incorrect, grossly inconsistent,
6 or unintelligible entries in any hospital, patient, or other record
7 pertaining to the substances described in subdivision (a) of this
8 section.

7. Code section 4022 states:

8 'Dangerous drug' or 'dangerous device' means any drug or
9 device unsafe for self-use in humans or animals, and includes the
10 following:

11 (a) Any drug that bears the legend: 'Caution: federal law
12 prohibits dispensing without prescription,' 'Rx only,' or words of
13 similar import.

14 (b) Any device that bears the statement: 'Caution:
15 federal law restricts this device to sale by or on the order of a
16 _____,' 'Rx only,' or words of similar import, the blank
17 to be filled in with the designation of the practitioner licensed
18 to use or order use of the device.

19 (c) Any other drug or device that by federal or state law
20 can be lawfully dispensed only on prescription or furnished
21 pursuant to Section 4006.

22 8. Code section 4060 states:

23 No person shall possess any controlled substance, except
24 that furnished to a person upon the prescription of a physician,
25 dentist, podiatrist, optometrist, veterinarian, or naturopathic
26 doctor pursuant to Section 3640.7, or furnished pursuant to a
27 drug order issued by a certified nurse-midwife pursuant to
28 Section 2746.51, a nurse practitioner pursuant to Section 2836.1,
a physician assistant pursuant to Section 3502.1, a naturopathic
doctor pursuant to Section 3640.5, or a pharmacist pursuant
to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of
Section 4052. This section shall not apply to the possession
of any controlled substance by a manufacturer, wholesaler,
pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse- midwife, nurse
practitioner, or physician assistant, when in stock in containers
correctly labeled with the name and address of the supplier
or producer.

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9. Health and Safety Code section 11173, subdivision (a), states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

10. Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

11. “Demerol,” a brand name for Meperidine, an opiate, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(2), and is dangerous drug within the meaning of Code section 4022.

12. "Opiates" are Schedule II controlled substances pursuant to Health and Safety Code section 11055 and are dangerous drugs within the meaning of Code section 4022.

Background

13. On August 25, 2004, Respondent was working as a registry nurse at Alvarado Parkway Institute, located in La Mesa, California, as the Nurse-in-Charge of the South Unit's controlled substance medication storage locker.

14. At approximately 20:30 hours, Respondent was reported missing when she failed to return to her assigned work area following a break. She was later discovered slumped over near her car and in an unresponsive state. A dose of Narcan, a narcotic medication used to reverse the effects of other narcotic medications, was administered to her by attending paramedics after a fresh needle mark was noticed on her arm. Respondent immediately responded to the Narcan injection, and was transported to a local hospital for emergency treatment. A subsequent urine specimen tested positive for opiates and benzodiazepine.

15. Based on her reaction to Narcan, a review of controlled substance count sheets prepared by Respondent during her shift on August 25, 2004 was conducted. The audit revealed that Respondent made entries on the controlled substance count sheets at the beginning

1 of her shift listing either seven or eight doses of Demerol 100mg. At the end of Respondent's
2 shift, only six doses of Demerol 100mg were counted, leaving one dose of Demerol 100mg.
3 unaccounted for. There was no charting to indicate that Demerol had been administered to a
4 patient during Respondent's shift.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Wrongfully Obtaining, Possessing, and Self-Administering a**
7 **Controlled Substance/Dangerous Drug)**

8 16. Respondent's license is subject to discipline for unprofessional conduct
9 under Code section 2762, subdivision (a), in that on or about August 25, 2004, while working
10 at Alvarado Parkway Institute, Respondent committed the following acts:

11 a. **Wrongfully Obtaining Controlled Substances/Dangerous Drugs.**

12 Respondent obtained a controlled substance (opiates) by fraud, deceit, misrepresentation, or
13 subterfuge; or by the concealment of a material fact, in violation of Health and Safety Code
14 section 11173, subdivision (a).

15 b. **Wrongfully Possessing Controlled Substances/Dangerous Drugs.**

16 Respondent possessed a controlled substance (opiates) in violation of Code section 4060.

17 c. **Wrongfully Self-administering Controlled Substances/Dangerous**

18 **Drugs.** Respondent self-administered a controlled substance (opiates) without the direction of a
19 licensed physician and surgeon, dentist or podiatrist, as set forth above in paragraph 14.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dangerous or Injurious Use of a Controlled Substance/Dangerous Drug)**

22 17. Respondent's license is subject to discipline for unprofessional conduct
23 under Code section 2762, subdivision (b), in that on or about August 25, 2004, while working at
24 Alvarado Parkway Institute, Respondent used a controlled substance (opiates) to such an extent
25 or in such a manner as to be dangerous or injurious to Respondent, any other person, or the
26 public, or to such an extent that such usage impaired Respondent's ability to conduct with
27 safety to the public the practice authorized by her license, as set forth above in paragraph 14.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(False, Grossly Incorrect, or Grossly Inconsistent Record Entries)**


3 18. Respondent's license is subject to discipline for unprofessional conduct
4 under Code section 2762, subdivision (e), for making false, grossly incorrect, or grossly
5 inconsistent entries in hospital, patient, or other records pertaining to a controlled substance,
6 in that on or about August 25, 2004, while working at Alvarado Parkway Institute, Respondent
7 made grossly inconsistent entries for the Demerol count on the hospital's controlled substance
8 count sheets, as set forth above in paragraph 14.

9 **PRAYER**

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters
11 herein alleged, and that following the hearing the Board issue a decision:

- 12 1. Revoking or suspending Registered Nurse License Number 566583, issued
13 to Dana Suzanne Weaver Franklin, also known as Dana Suzanne Franklin, also known as Dana
14 Weaver Franklin;
- 15 2. Ordering Dana Suzanne Weaver Franklin, also known as Dana Suzanne
16 Franklin, also known as Dana Weaver Franklin to pay the reasonable costs incurred by the Board
17 in the investigation and enforcement of this case pursuant to Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19

20 **DATED:** 11/5/07

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22 
23 RUTH ANN TERRY, M.P.H., R.N.
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant